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CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 2363**

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**Introduced by Assembly Member Dahle**  
**(Principal coauthor: Assembly Member Alejo)**  
**(Coauthors: Assembly Members Bonilla, Bradford, Jones, and**  
**Patterson)**  
(Coauthor: Senator Galgiani)

February 21, 2014

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An act to amend Sections 399.13 and 454.5 of the Public Utilities Code, relating to energy.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2363, as amended, Dahle. Electricity procurement.

(1) Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations, as defined, while local publicly owned electric utilities, as defined, are under the direction of their governing board. The Public Utilities Act imposes various duties and responsibilities on the Public Utilities Commission with respect to the purchase of electricity and requires the commission to review and adopt a procurement plan and

a renewable energy procurement plan for each electrical corporation pursuant to the California Renewables Portfolio Standard Program.

The Public Utilities Act requires the Public Utilities Commission to review and adopt an overall procurement plan for each electrical corporation to meet electricity demand for its customers in accordance with specified elements, incentive mechanisms, and objectives. The act requires the Public Utilities Commission to review and accept, modify, or reject each electrical corporation's procurement plan and requires that each approved procurement plan accomplish specified objectives.

This bill would require the Public Utilities Commission to direct electrical corporations to include in their proposed procurement plans the costs of integrating an eligible renewable energy resource, as specified.

(2) The California Renewables Portfolio Standard Program requires a retail seller, as defined, and local publicly owned electric utilities to purchase specified minimum quantities of electricity products from eligible renewable energy resources, as defined, for specified compliance periods. The program, consistent with the goals of procuring the least-cost and best-fit eligible renewable energy resources that meet project viability principles, requires that all retail sellers procure a balanced portfolio of electricity products from eligible renewable energy resources, as specified, referred to as the portfolio content requirements. The program requires the commission to adopt, by rulemaking, a process that provides criteria for the rank ordering and selecting of least-cost and best-fit eligible renewable energy resources to comply with the program obligations on a total cost basis, taking into account specified matter.

This bill additionally would require the commission to adopt, by rulemaking, by ~~October 1~~, *December 31*, 2015, a methodology for determining the costs of integrating an eligible renewable energy resource.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) California is leading the world in adopting comprehensive
- 4 programs that reduce emissions of greenhouse gases, including

1 passage of the California Global Warming Solutions Act of 2006  
2 (Division 25.5 (commencing with Section 38500) of the Health  
3 and Safety Code) and the California Renewables Portfolio Standard  
4 Program (Article 16 (commencing with Section 399.11) of Chapter  
5 2.3 of Part 1 of Division 1 of the Public Utilities Code).

6 (b) The state has an abundant supply of renewable energy  
7 resources, including geothermal, biomass, biomethane, wind, and  
8 solar, that has contributed to the state's ability to reduce its  
9 emissions of greenhouse gases and meet its renewables portfolio  
10 standard procurement targets.

11 (c) It is in the public's interest that the state continue to promote  
12 policies to ensure eligible renewable energy resources be procured  
13 and contributed to the state's ability to reduce its greenhouse gas  
14 emissions and meet the targets of the California Renewables  
15 Portfolio Standard Program (Article 16 (commencing with Section  
16 399.11) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities  
17 Code).

18 (d) There are eligible renewable energy resources in the state  
19 that, if developed and retained, would not require additional  
20 capacity to maintain the reliability of the bulk electrical system  
21 and could generate during periods in which electricity is likely to  
22 be the most valuable, prospectively.

23 (e) Procuring and retaining a diversified portfolio of eligible  
24 renewable energy resources may do all of the following:

25 (1) Assist electrical corporations in satisfying renewable energy  
26 procurement and greenhouse gas emissions reductions goals in a  
27 cost-effective manner.

28 (2) Partially meet peak load requirements with electricity  
29 generated by eligible renewable energy resources, which will have  
30 substantial benefits from reduced emissions of greenhouse gases,  
31 and cobenefits from reduced emissions of criteria pollutants.

32 (3) Maintain the reliability of the electrical grid to meet demand  
33 for electricity on a 24-hour basis.

34 (4) Contribute to local employment and economic growth  
35 throughout the state.

36 SEC. 2. Section 399.13 of the Public Utilities Code is amended  
37 to read:

38 399.13. (a) (1) The commission shall direct each electrical  
39 corporation to annually prepare a renewable energy procurement  
40 plan that includes the matter in paragraph (5), to satisfy its

1 obligations under the renewables portfolio standard. To the extent  
2 feasible, this procurement plan shall be proposed, reviewed, and  
3 adopted by the commission as part of, and pursuant to, a general  
4 procurement plan process. The commission shall require each  
5 electrical corporation to review and update its renewable energy  
6 procurement plan as it determines to be necessary.

7 (2) Every electrical corporation that owns electrical transmission  
8 facilities shall annually prepare, as part of the Federal Energy  
9 Regulatory Commission Order 890 process, and submit to the  
10 commission, a report identifying any electrical transmission  
11 facility, upgrade, or enhancement that is reasonably necessary to  
12 achieve the renewables portfolio standard procurement  
13 requirements of this article. Each report shall look forward at least  
14 five years and, to ensure that adequate investments are made in a  
15 timely manner, shall include a preliminary schedule when an  
16 application for a certificate of public convenience and necessity  
17 will be made, pursuant to Chapter 5 (commencing with Section  
18 1001), for any electrical transmission facility identified as being  
19 reasonably necessary to achieve the renewable energy resources  
20 procurement requirements of this article. Each electrical  
21 corporation that owns electrical transmission facilities shall ensure  
22 that project-specific interconnection studies are completed in a  
23 timely manner.

24 (3) The commission shall direct each retail seller to prepare and  
25 submit an annual compliance report that includes all of the  
26 following:

27 (A) The current status and progress made during the prior year  
28 toward procurement of eligible renewable energy resources as a  
29 percentage of retail sales, including, if applicable, the status of any  
30 necessary siting and permitting approvals from federal, state, and  
31 local agencies for those eligible renewable energy resources  
32 procured by the retail seller, and the current status of compliance  
33 with the portfolio content requirements of subdivision (c) of  
34 Section 399.16, including procurement of eligible renewable energy  
35 resources located outside the state and within the WECC and  
36 unbundled renewable energy credits.

37 (B) If the retail seller is an electrical corporation, the current  
38 status and progress made during the prior year toward construction  
39 of, and upgrades to, transmission and distribution facilities and  
40 other electrical system components it owns to interconnect eligible

1 renewable energy resources and to supply the electricity generated  
2 by those resources to load, including the status of planning, siting,  
3 and permitting transmission facilities by federal, state, and local  
4 agencies.

5 (C) Recommendations to remove impediments to making  
6 progress toward achieving the renewable energy resources  
7 procurement requirements established pursuant to this article.

8 (4) The commission shall adopt, by rulemaking, all of the  
9 following:

10 (A) A process that provides criteria for the rank ordering and  
11 selection of least-cost and best-fit eligible renewable energy  
12 resources to comply with the California Renewables Portfolio  
13 Standard Program obligations on a total cost basis. This process  
14 shall take into account all of the following:

15 (i) Estimates of indirect costs associated with needed  
16 transmission investments.

17 (ii) The cost impact of procuring the eligible renewable energy  
18 resources on the electrical corporation's electricity portfolio.

19 (iii) The viability of the project to construct and reliably operate  
20 the eligible renewable energy resource, including the developer's  
21 experience, the feasibility of the technology used to generate  
22 electricity, and the risk that the facility will not be built, or that  
23 construction will be delayed, with the result that electricity will  
24 not be supplied as required by the contract.

25 (iv) Workforce recruitment, training, and retention efforts,  
26 including the employment growth associated with the construction  
27 and operation of eligible renewable energy resources and goals  
28 for recruitment and training of women, minorities, and disabled  
29 veterans.

30 (v) (I) Estimates of electrical corporation expenses resulting  
31 from integrating and operating eligible renewable energy resources,  
32 including, but not limited to, any additional wholesale energy and  
33 capacity costs associated with integrating each eligible renewable  
34 resource.

35 (II) No later than ~~October 1~~, *December 31*, 2015, the  
36 commission shall approve a methodology for determining the  
37 integration costs described in subclause (I).

38 (B) Rules permitting retail sellers to accumulate, beginning  
39 January 1, 2011, excess procurement in one compliance period to  
40 be applied to any subsequent compliance period. The rules shall

1 apply equally to all retail sellers. In determining the quantity of  
2 excess procurement for the applicable compliance period, the  
3 commission shall deduct from actual procurement quantities the  
4 total amount of procurement associated with contracts of less than  
5 10 years in duration. In no event shall electricity products meeting  
6 the portfolio content of paragraph (3) of subdivision (b) of Section  
7 399.16 be counted as excess procurement.

8 (C) Standard terms and conditions to be used by all electrical  
9 corporations in contracting for eligible renewable energy resources,  
10 including performance requirements for renewable generators. A  
11 contract for the purchase of electricity generated by an eligible  
12 renewable energy resource, at a minimum, shall include the  
13 renewable energy credits associated with all electricity generation  
14 specified under the contract. The standard terms and conditions  
15 shall include the requirement that, no later than six months after  
16 the commission's approval of an electricity purchase agreement  
17 entered into pursuant to this article, the following information  
18 about the agreement shall be disclosed by the commission: party  
19 names, resource type, project location, and project capacity.

20 (D) An appropriate minimum margin of procurement above the  
21 minimum procurement level necessary to comply with the  
22 renewables portfolio standard to mitigate the risk that renewable  
23 projects planned or under contract are delayed or canceled. This  
24 paragraph does not preclude an electrical corporation from  
25 voluntarily proposing a margin of procurement above the  
26 appropriate minimum margin established by the commission.

27 (5) Consistent with the goal of increasing California's reliance  
28 on eligible renewable energy resources, the renewable energy  
29 procurement plan submitted by an electrical corporation shall  
30 include all of the following:

31 (A) An assessment of annual or multiyear portfolio supplies  
32 and demand to determine the optimal mix of eligible renewable  
33 energy resources with deliverability characteristics that may include  
34 peaking, dispatchable, baseload, firm, and as-available capacity.

35 (B) Potential compliance delays related to the conditions  
36 described in paragraph (5) of subdivision (b) of Section 399.15.

37 (C) A bid solicitation setting forth the need for eligible  
38 renewable energy resources of each deliverability characteristic,  
39 required online dates, and locational preferences, if any.

1 (D) A status update on the development schedule of all eligible  
2 renewable energy resources currently under contract.

3 (E) Consideration of mechanisms for price adjustments  
4 associated with the costs of key components for eligible renewable  
5 energy resource projects with online dates more than 24 months  
6 after the date of contract execution.

7 (F) An assessment of the risk that an eligible renewable energy  
8 resource will not be built, or that construction will be delayed,  
9 with the result that electricity will not be delivered as required by  
10 the contract.

11 (6) In soliciting and procuring eligible renewable energy  
12 resources, each electrical corporation shall offer contracts of no  
13 less than 10 years duration, unless the commission approves of a  
14 contract of shorter duration.

15 (7) In soliciting and procuring eligible renewable energy  
16 resources for California-based projects, each electrical corporation  
17 shall give preference to renewable energy projects that provide  
18 environmental and economic benefits to communities afflicted  
19 with poverty or high unemployment, or that suffer from high  
20 emission levels of toxic air contaminants, criteria air pollutants,  
21 and greenhouse gases.

22 (b) A retail seller may enter into a combination of long- and  
23 short-term contracts for electricity and associated renewable energy  
24 credits. The commission may authorize a retail seller to enter into  
25 a contract of less than 10 years' duration with an eligible renewable  
26 energy resource, if the commission has established, for each retail  
27 seller, minimum quantities of eligible renewable energy resources  
28 to be procured through contracts of at least 10 years' duration.

29 (c) The commission shall review and accept, modify, or reject  
30 each electrical corporation's renewable energy resource  
31 procurement plan prior to the commencement of renewable energy  
32 procurement pursuant to this article by an electrical corporation.

33 (d) Unless previously preapproved by the commission, an  
34 electrical corporation shall submit a contract for the generation of  
35 an eligible renewable energy resource to the commission for review  
36 and approval consistent with an approved renewable energy  
37 resource procurement plan. If the commission determines that the  
38 bid prices are elevated due to a lack of effective competition among  
39 the bidders, the commission shall direct the electrical corporation  
40 to renegotiate the contracts or conduct a new solicitation.

(e) If an electrical corporation fails to comply with a commission order adopting a renewable energy resource procurement plan, the commission shall exercise its authority pursuant to Section 2113 to require compliance. The commission shall enforce comparable penalties on any retail seller that is not an electrical corporation that fails to meet the procurement targets established pursuant to Section 399.15.

(f) (1) The commission may authorize a procurement entity to enter into contracts on behalf of customers of a retail seller for electricity products from eligible renewable energy resources to satisfy the retail seller's renewables portfolio standard procurement requirements. The commission shall not require any person or corporation to act as a procurement entity or require any party to purchase eligible renewable energy resources from a procurement entity.

(2) Subject to review and approval by the commission, the procurement entity shall be permitted to recover reasonable administrative and procurement costs through the retail rates of end-use customers that are served by the procurement entity and are directly benefiting from the procurement of eligible renewable energy resources.

(g) Procurement and administrative costs associated with contracts entered into by an electrical corporation for eligible renewable energy resources pursuant to this article and approved by the commission are reasonable and prudent and shall be recoverable in rates.

(h) Construction, alteration, demolition, installation, and repair work on an eligible renewable energy resource that receives production incentives pursuant to Section 25742 of the Public Resources Code, including work performed to qualify, receive, or maintain production incentives, are "public works" for the purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

SEC. 3. Section 454.5 of the Public Utilities Code is amended to read:

454.5. (a) The commission shall specify the allocation of electricity, including quantity, characteristics, and duration of electricity delivery, that the Department of Water Resources shall provide under its power purchase agreements to the customers of each electrical corporation, which shall be reflected in the electrical



1 corporation's proposed procurement plan. Each electrical  
2 corporation shall file a proposed procurement plan with the  
3 commission not later than 60 days after the commission specifies  
4 the allocation of electricity. The proposed procurement plan shall  
5 specify the date that the electrical corporation intends to resume  
6 procurement of electricity for its retail customers, consistent with  
7 its obligation to serve. After the commission's adoption of a  
8 procurement plan, the commission shall allow not less than 60  
9 days before the electrical corporation resumes procurement  
10 pursuant to this section.

11 (b) An electrical corporation's proposed procurement plan shall  
12 include, but not be limited to, all of the following:

13 (1) An assessment of the price risk associated with the electrical  
14 corporation's portfolio, including any utility-retained generation,  
15 existing power purchase and exchange contracts, and proposed  
16 contracts or purchases under which an electrical corporation will  
17 procure electricity, electricity demand reductions, and  
18 electricity-related products and the remaining open position to be  
19 served by spot market transactions.

20 (2) A definition of each electricity product, electricity-related  
21 product, and procurement related financial product, including  
22 support and justification for the product type and amount to be  
23 procured under the plan.

24 (3) The duration of the plan.

25 (4) The duration, timing, and range of quantities of each product  
26 to be procured.

27 (5) A competitive procurement process under which the  
28 electrical corporation may request bids for procurement-related  
29 services, including the format and criteria of that procurement  
30 process.

31 (6) An incentive mechanism, if any incentive mechanism is  
32 proposed, including the type of transactions to be covered by that  
33 mechanism, their respective procurement benchmarks, and other  
34 parameters needed to determine the sharing of risks and benefits.

35 (7) The upfront standards and criteria by which the acceptability  
36 and eligibility for rate recovery of a proposed procurement  
37 transaction will be known by the electrical corporation prior to  
38 execution of the transaction. This shall include an expedited  
39 approval process for the commission's review of proposed contracts  
40 and subsequent approval or rejection thereof. The electrical

1 corporation shall propose alternative procurement choices in the  
2 event a contract is rejected.

3 (8) Procedures for updating the procurement plan.

4 (9) A showing that the procurement plan will achieve the  
5 following:

6 (A) The electrical corporation, in order to fulfill its unmet  
7 resource needs, shall procure resources from eligible renewable  
8 energy resources in an amount sufficient to meet its procurement  
9 requirements pursuant to the California Renewables Portfolio  
10 Standard Program (Article 16 (commencing with Section 399.11)  
11 of Chapter 2.3).

12 (B) The electrical corporation shall create or maintain a  
13 diversified procurement portfolio consisting of both short-term  
14 and long-term electricity and electricity-related and demand  
15 reduction products.

16 (C) The electrical corporation shall first meet its unmet resource  
17 needs through all available energy efficiency and demand reduction  
18 resources that are cost effective, reliable, and feasible.

19 (10) The electrical corporation's risk management policy,  
20 strategy, and practices, including specific measures of price  
21 stability.

22 (11) A plan to achieve appropriate increases in diversity of  
23 ownership and diversity of fuel supply of nonutility electrical  
24 generation.

25 (12) A mechanism for recovery of reasonable administrative  
26 costs related to procurement in the generation component of rates.

27 (c) The commission shall review and accept, modify, or reject  
28 each electrical corporation's procurement plan. The commission's  
29 review shall consider each electrical corporation's individual  
30 procurement situation, and shall give strong consideration to that  
31 situation in determining which one or more of the features set forth  
32 in this subdivision shall apply to that electrical corporation. A  
33 procurement plan approved by the commission shall contain one  
34 or more of the following features, provided that the commission  
35 may not approve a feature or mechanism for an electrical  
36 corporation if it finds that the feature or mechanism would impair  
37 the restoration of an electrical corporation's creditworthiness or  
38 would lead to a deterioration of an electrical corporation's  
39 creditworthiness:

1 (1) A competitive procurement process under which the  
2 electrical corporation may request bids for procurement-related  
3 services. The commission shall specify the format of that  
4 procurement process, as well as criteria to ensure that the auction  
5 process is open and adequately subscribed. Any purchases made  
6 in compliance with the commission-authorized process shall be  
7 recovered in the generation component of rates.

8 (2) An incentive mechanism that establishes a procurement  
9 benchmark or benchmarks and authorizes the electrical corporation  
10 to procure from the market, subject to comparing the electrical  
11 corporation's performance to the commission-authorized  
12 benchmark or benchmarks. The incentive mechanism shall be  
13 clear, achievable, and contain quantifiable objectives and standards.  
14 The incentive mechanism shall contain balanced risk and reward  
15 incentives that limit the risk and reward of an electrical corporation.

16 (3) Upfront achievable standards and criteria by which the  
17 acceptability and eligibility for rate recovery of a proposed  
18 procurement transaction will be known by the electrical corporation  
19 prior to the execution of the bilateral contract for the transaction.  
20 The commission shall provide for expedited review and either  
21 approve or reject the individual contracts submitted by the electrical  
22 corporation to ensure compliance with its procurement plan. To  
23 the extent the commission rejects a proposed contract pursuant to  
24 this criteria, the commission shall designate alternative procurement  
25 choices obtained in the procurement plan that will be recoverable  
26 for ratemaking purposes.

27 (d) A procurement plan approved by the commission shall  
28 accomplish each of the following objectives:

29 (1) Enable the electrical corporation to fulfill its obligation to  
30 serve its customers at just and reasonable rates.

31 (2) Eliminate the need for after-the-fact reasonableness reviews  
32 of an electrical corporation's actions in compliance with an  
33 approved procurement plan, including resulting electricity  
34 procurement contracts, practices, and related expenses. However,  
35 the commission may establish a regulatory process to verify and  
36 ensure that each contract was administered in accordance with the  
37 terms of the contract, and contract disputes that may arise are  
38 reasonably resolved.

39 (3) Ensure timely recovery of prospective procurement costs  
40 incurred pursuant to an approved procurement plan. The

1 commission shall establish rates based on forecasts of procurement  
2 costs adopted by the commission, actual procurement costs  
3 incurred, or combination thereof, as determined by the commission.  
4 The commission shall establish power procurement balancing  
5 accounts to track the differences between recorded revenues and  
6 costs incurred pursuant to an approved procurement plan. The  
7 commission shall review the power procurement balancing  
8 accounts, not less than semiannually, and shall adjust rates or order  
9 refunds, as necessary, to promptly amortize a balancing account,  
10 according to a schedule determined by the commission. Until  
11 January 1, 2006, the commission shall ensure that any  
12 overcollection or undercollection in the power procurement  
13 balancing account does not exceed 5 percent of the electrical  
14 corporation's actual recorded generation revenues for the prior  
15 calendar year excluding revenues collected for the Department of  
16 Water Resources. The commission shall determine the schedule  
17 for amortizing the overcollection or undercollection in the  
18 balancing account to ensure that the 5 percent threshold is not  
19 exceeded. After January 1, 2006, this adjustment shall occur when  
20 deemed appropriate by the commission consistent with the  
21 objectives of this section.

22 (4) Moderate the price risk associated with serving its retail  
23 customers, including the price risk embedded in its long-term  
24 supply contracts, by authorizing an electrical corporation to enter  
25 into financial and other electricity-related product contracts.

26 (5) Provide for just and reasonable rates, with an appropriate  
27 balancing of price stability and price level in the electrical  
28 corporation's procurement plan.

29 (e) The commission shall provide for the periodic review and  
30 prospective modification of an electrical corporation's procurement  
31 plan.

32 (f) The commission may engage an independent consultant or  
33 advisory service to evaluate risk management and strategy. The  
34 reasonable costs of any consultant or advisory service is a  
35 reimbursable expense and eligible for funding pursuant to Section  
36 631.

37 (g) The commission shall adopt appropriate procedures to ensure  
38 the confidentiality of any market sensitive information submitted  
39 in an electrical corporation's proposed procurement plan or  
40 resulting from or related to its approved procurement plan,

1 including, but not limited to, proposed or executed power purchase  
2 agreements, data request responses, or consultant reports, or any  
3 combination, provided that the Office of Ratepayer Advocates and  
4 other consumer groups that are nonmarket participants shall be  
5 provided access to this information under confidentiality  
6 procedures authorized by the commission.

7 (h) Nothing in this section alters, modifies, or amends the  
8 commission's oversight of affiliate transactions under its rules and  
9 decisions or the commission's existing authority to investigate and  
10 penalize an electrical corporation's alleged fraudulent activities,  
11 or to disallow costs incurred as a result of gross incompetence,  
12 fraud, abuse, or similar grounds. Nothing in this section expands,  
13 modifies, or limits the State Energy Resources Conservation and  
14 Development Commission's existing authority and responsibilities  
15 as set forth in Sections 25216, 25216.5, and 25323 of the Public  
16 Resources Code.

17 (i) An electrical corporation that serves less than 500,000 electric  
18 retail customers within the state may file with the commission a  
19 request for exemption from this section, which the commission  
20 shall grant upon a showing of good cause.

21 (j) (1) Prior to its approval pursuant to Section 851 of any  
22 divestiture of generation assets owned by an electrical corporation  
23 on or after the date of enactment of the act adding this section, the  
24 commission shall determine the impact of the proposed divestiture  
25 on the electrical corporation's procurement rates and shall approve  
26 a divestiture only to the extent it finds, taking into account the  
27 effect of the divestiture on procurement rates, that the divestiture  
28 is in the public interest and will result in net ratepayer benefits.

29 (2) Any electrical corporation's procurement necessitated as a  
30 result of the divestiture of generation assets on or after the effective  
31 date of the act adding this subdivision shall be subject to the  
32 mechanisms and procedures set forth in this section only if its  
33 actual cost is less than the recent historical cost of the divested  
34 generation assets.

35 (3) Notwithstanding paragraph (2), the commission may deem  
36 proposed procurement eligible to use the procedures in this section  
37 upon its approval of asset divestiture pursuant to Section 851.

38 (k) The commission shall direct electrical corporations to include  
39 in their proposed procurement plans the integration costs described

- 1 and determined pursuant to clause (v) of subparagraph (A) of
- 2 paragraph (4) of subdivision (a) of Section 399.13.

O